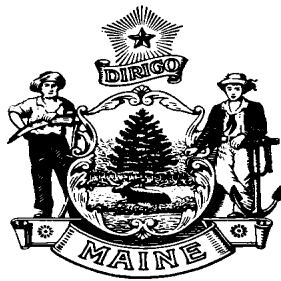


**REGULATIONS GOVERNING THE LICENSING
AND
FUNCTIONING
OF
ASSISTED HOUSING PROGRAMS**

Assisted Living Programs



PROPOSED

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
LICENSING AND CERTIFICATION
COMMUNITY SERVICES PROGRAMS**

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Definitions

The following terms have the meanings as specified.

- 2.1** “**Abuse**” means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation, or the willful deprivation of essential needs.
- 2.2** “**Activities of Daily Living (hereinafter ADLs)**” means tasks routinely performed by a person to maintain bodily functions, including bed mobility, transfers, locomotion, dressing, eating, toileting, bathing and personal hygiene.
- 2.3** “**Adult Day Services**” means the care and supervision of consumers who attend daytime or nighttime programs but do not live in the building.
- 2.4** “**Advance Directives**” means a document signed by the consumer, guardian or agent under durable power of attorney, giving or withholding consent or approval related to medical or other professional care, counsel, treatment or service for the consumer, in the event that the consumer becomes unable to provide that direction.
- 2.5** “**Aging in Place**” means a program of services that furthers the independence of the consumer and respects their privacy and personal choices, including the choice to continue to reside at home for so long as the assisted living program, as it is fundamentally designed, is able to meet their needs. Assisted living programs provided to consumers must be consumer oriented and meet professional standards of quality.
- 2.6** “**Alzheimer’s/Dementia Care Unit**” means a unit, building or distinct part of a building that provides care/services in a designated, separated area for consumers with Alzheimer’s disease or other dementia. The unit, building or distinct part provides specialized programs, services and activities, and is locked, segregated or secured to provide or limit access by consumers inside and outside the designated or separated area.
- 2.7** “**Applicant**” means the person who owns the building and is applying for a license, or the person who is applying for a license pursuant to a valid lease agreement, contract or other agreement with the owner of the building that delineates the roles and duties under these rules.
- 2.8** “**Assisted Living Program**” means a program of assisted living services provided to consumers in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies. The types of assisted living programs governed by these regulations include:

 - 2.8.1** Type I – an assisted living program that provides medication administration directly or indirectly through contracts with persons, entities or agencies.
 - 2.8.2** Type II – an assisted living program that provides medication administration and nursing services directly or indirectly through contracts with persons, entities or agencies *as follows:*

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2.8.2.1 Services of a Registered Professional Nurse; and/or

2.8.2.2 Registered Professional Nurse coordination and oversight of consumer services provided by unlicensed health care assistive personnel.

2.9 “**Assisted Living Services**” means the provision by an assisted housing program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services, assisted housing services with the addition of medication administration or assisted housing services with the addition of medication administration and nursing services, defined as follows:

2.9.1 Personal supervision, meaning general awareness of a consumer’s general whereabouts, giving consideration to the nature of the living arrangement; and, observation and assessment of each consumer’s functioning or behavior to enhance his or her health or safety or the health or safety of others;

2.9.2 Protection from environmental hazards, meaning mitigation of risk in the physical environment to prevent unnecessary injury or accident;

2.9.3 Assistance with Activities of Daily Living and Instrumental Activities of Daily Living;

2.9.4 Diversional, motivational or recreational activities, meaning activities that respond to consumers’ interests or which stimulate social interaction, both in individual and group settings;

2.9.5 Dietary services, meaning the provision of regular and therapeutic diets that meet each consumer’s minimum daily food requirements, based on the number of meals served, as defined by the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

2.9.6 Care Management Services, meaning a process of working with a consumer to identify his/her needs and strengths, developing a service plan and arranging for and monitoring service delivery;

2.9.7 **Administration of medications**, meaning services such as reading labels for consumers, observing consumers taking their medications, checking the dosage, removing the prescribed dosage, filling a syringe and administering insulin and bee sting kits (when permitted) and the maintenance of a medication record for each consumer;

2.9.8 **Nursing services**, meaning services provided by professional nurses licensed pursuant to Title 32, section 2102, subsection 2. It includes coordination and oversight of consumer care services provided by unlicensed health care assistive personnel in assisted living programs.

2.10 “**Certified Nursing Assistant (CNA)**” means a person who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing or is deemed to have had comparable training according to regulations established by the Maine State Board of

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Nursing, and whose duties are assigned by a registered professional nurse, and who is currently listed on the Maine Registry of Certified Nursing Assistants.

- 2.11** “**Certified Nursing Assistant/Medications (CNA-M)**” means a Certified Nursing Assistant who has satisfactorily completed the standardized medication course for Certified Nursing Assistants, the curriculum for which is prescribed by the Maine State Board of Nursing.
- 2.12** “**Consumer**” means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the assisted living provider or building in which the consumer lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a consumer. The Statutory term “resident” has the same meaning as consumer.
- 2.13** “**Consumer’s Service Plan**” means a written service plan developed with a consumer, based upon an assessment of the consumer’s needs and abilities and including (as appropriate) habilitative or rehabilitative goals and objectives, program goals and objectives and the resources and methods necessary to implement the plan.
- 2.14** “**Deficiency**” means a violation of State licensing regulations.
- 2.15** “**Dementia**” means an acquired loss of intellectual functioning (primarily abstract thinking, memory, and judgment) of sufficient severity to interfere with a person’s ability to act independently and perform routine daily activities. Symptoms of dementia can include memory loss and the loss or diminution of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself. Dementia is not a disease in and of itself but rather a group of symptoms that accompanies certain diseases and conditions. Dementia can be caused by such diseases as Alzheimer’s Disease, Pick’s Disease, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s Disease, Huntington’s Disease, Creutzfeldt-Jakob Disease, multi-infarct dementia, etc.
- 2.16** “**Department**” means the Maine Department of Health and Human Services.
- 2.17** “**Directed Plan of Correction**” means a Plan of Correction issued by the Department which directs how and when to correct cited deficiencies.
- 2.18** “**Distinct Part**” means a physically separate unit that is clearly identifiable from the remainder of the building. Various apartments or beds scattered throughout the building would not comprise a “distinct part”. The “distinct part” of a building provides a level of service distinguishable from other levels of care in the building.
- 2.19** “**Duly Authorized Licensed Practitioner**” means an individual currently licensed in the State of Maine as a physician, physician’s assistant or nurse practitioner.
- 2.20** “**Emergency**” means either those events that demonstrate that a consumer has an urgent medical or psychological need that requires immediate acute care treatment or poses imminent danger to other consumers. Emergency also means a natural disaster that damages or interrupts vital services to consumers or the integrity of the physical plant.

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- 2.21** “**Exploitation**” means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another’s profit or advantage.
- 2.22** “**Failure to Make Timely Correction of Any Deficiency**” means that a provider has not remedied a deficiency within the time frame established in a Plan of Correction or Directed Plan of Correction, or, if any extension has been granted by the Department, within the time frame of that extension.
- 2.23** “**False Information**” means any written or verbal statement or representation of fact that is not true and that was made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not the information was true.
- 2.24** “**Food Preparation Area**” means an area for storing and preparing food in an individual’s apartment. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and either two stovetop burners or a microwave oven.
- 2.25** “**Functional Assessment**” means a comprehensive evaluation of an individual’s health, social, environmental, financial and family or community supports, which will determine the strengths and needs of the individual.
- 2.26** “**Impede or Interfere with the Enforcement of Regulations**” means a failure to provide information to the Department that is necessary to determine compliance with licensure regulations or a failure to allow the Department access to an Assisted Housing Program or any part thereof.
- 2.27** “**Instrumental Activities of Daily Living (hereinafter IADLs)**” includes, but is not limited to, preparing or receiving of a main meal, taking medication, using the telephone, handling finances, banking, shopping, routine housework, laundry and getting to appointments.
- 2.28** “**Legal Representative**” means a guardian, conservator, agent under durable power of attorney, representative payee, or other person authorized by law, whose authority extends to the matter under consideration and who has provided the assisted living provider with documentation of their legal authority.
- 2.29** “**Licensee**” means the person to whom a license is issued.
- 2.30** “**Licensed Health Care Professional**” means health care providers, including physicians, registered professional nurses, licensed practical nurses, physician assistants, nurse practitioners, occupational therapists, speech pathologists, physical therapists, dietitians and social workers who have been authorized to practice a health care profession in accordance with Maine State law.
- 2.31** “**Medication Error**” means the administration of any medication incorrectly, e.g., dosage, selection of drug, selection of consumer, time or method of administration, omission of prescribed medication, error in documentation or the administration of a medication without a valid order.
- 2.32** “**Neglect**” means a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these threats.

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2.33	“Person” means any individual, owner, corporation, partnership, association, governmental subdivision or any other entity.
2.34	“Pharmacist” means an individual currently licensed as a registered professional pharmacist in the State of Maine.
2.35	“Physician” means an individual currently licensed to practice medicine or osteopathy in the State of Maine.
2.36	“Plan of Correction (hereinafter POC)” means a section of the Statement of Deficiencies completed by the provider, detailing the plan to correct deficiencies and the completion dates.
2.37	“Private Apartment” means a private dwelling unit with an individual bathroom, bedroom and a food preparation area.
2.38	“Provider” means the licensee.
2.39	“Psychotropic Medications” means antipsychotic agents, major tranquilizers, antidepressant agents, anxiolytic agents and hypnotic agents.
2.40	“Qualified Consultant Dietitian” means an individual who is currently licensed to practice dietetics in the State of Maine.
2.41	“Qualified Interpreter” means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.
2.42	“Registered Nurse” or “Registered Professional Nurse (hereinafter RN)” means an individual who is currently licensed by the Maine State Board of Nursing to practice professional nursing.
2.43	“Related by Blood or Marriage” means spouses, parents, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations.
2.44	“Repeated Deficiency” means a violation of a rule more than once in a two (2) year period.
2.45	“Resident” means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the assisted living provider or building in which the resident lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a resident. The Statutory term “resident” has the same meaning as consumer.
2.46	“Consumer Rights” means those rights enumerated in Title 22 M.R.S.A. § 7921 <u>et seq.</u> , 22 M.R.S.A. § 7853(6), which apply to assisted housing programs, and Section 5 of these regulations.
2.47	“Restraints” means any device or other means, except mechanical supports used in normative situations to achieve proper body position and balance:
2.47.1	Which is intended to restrict freedom of movement or access to one’s body; or

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- 2.47.2** Any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.
- 2.48** “**Self-Administration of Medication**” means a consumer takes his/her own medication(s) independent of a staff person preparing the medication for the individual.
- 2.49** “**Shared Staffing**” as defined in 22 M.R.S.A. § 7860 means the use of licensed and unlicensed personnel who are employed, directly or under contract, by a long term care facility in more than one level of care provided by a single entity on the same premises.
- 2.50** “**Statement of Deficiencies (hereinafter SOD)**” means a document issued by the Department which describes deficiencies in complying with these regulations.
- 2.51** “**Submit**” means to deposit in the US mail, hand deliver, fax submission and electronic submission to the Department.
- 2.52** “**Tenancy Obligation**” means a house rule that does not conflict with these regulations, which is established by the licensee and included in the contract, that all consumers must adhere to in order to continue their residence.
- 2.53** “**Working Days**” means weekdays. Legal holidays (when state offices are closed), Saturdays and Sundays are not working days.

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Section 3

Licensing

- 3.1 Responsibility for compliance.** The applicant/licensee shall comply with these regulations.
- 3.2 Unlicensed facilities.** No person shall operate an assisted living program without a license, unless otherwise authorized by law.
- 3.3 Person license issued to.** The license is only valid for the named licensee(s).
- 3.4 Application and licensure.**
- 3.4.1 Application required.** The applicant is required to submit a written application for a license on a form approved by the Department. A license must be issued prior to the commencement of operation, or the applicant may be subject to sanctions. Incomplete applications, on which no action has been taken by the applicant after sixty (60) calendar days, shall be void.
- 3.4.2** A non-refundable licensing fee of \$200 shall be submitted with the application for each assisted living program. The check shall be made payable to the Treasurer, State of Maine.
- 3.4.3** Annually thereafter a licensee fee of \$200 is required.
- 3.4.4 Admission and scope of services policy.** Assisted Living Programs are required to provide the Department with a written admission policy at the time of application for a license. The policy shall describe who may be admitted and scope of services provided, including scope of Nursing Services, consistent with applicable state and federal law.
- 3.4.5 Additional licensing requirements.** Prior to the issuance of a license and prior to re-licensure, the assisted living program shall:
- 3.4.5.1** Be certified to be in compliance with the National Fire Protection Association (NFPA) Life Safety Code. Assisted living programs must be inspected using the section of the Life Safety Code that applies to new apartment buildings and must be protected throughout by a supervised, automatic sprinkler system approved by the Commissioner of Public Safety.
- 3.4.5.2** Comply with all applicable laws and regulations promulgated there under, relating to fire safety, plumbing, water supply, sewage disposal and maintenance of sanitary conditions (Class I, II, III).
- 3.4.5.3** Comply with all other applicable laws and regulations pertaining to licensing.

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- 3.5 Requirement for bond.** The applicant shall furnish evidence of a bond covering the applicant and any employee or agent of the applicant who manages, holds or otherwise is entrusted with consumer funds in an amount sufficient to replace those funds in the event of loss.
- 3.6 Limitations on serving as legal representative.** No licensee, owner, proprietor, administrator, employee or a person with a substantial financial interest in the assisted living program may serve as guardian, conservator or power of attorney of any consumer, but may be a representative payee or manager of personal funds.
- 3.7 Issuance of license.** A new applicant will be notified by the Department within two (2) weeks of filing an application whether the application is complete. The Department and the Department of Public Safety are required to provide a new applicant necessary services and inspections within ninety (90) days of the filing of the completed application and the date the building is ready for inspection. The license shall specify the name of the applicant, the name of the program, the type of program, the name of the administrator, the address of the premises where the program is located, the maximum number of units, the type of license, and the expiration date of the license.
- 3.8 Default licensing.** If a new applicant has filed a completed application and has a building ready for inspection, has not been provided the necessary notifications, inspections or services from the Department and the Department of Public Safety, and a period of more than ninety (90) days has elapsed since notification that the application is complete, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The Department shall notify a new applicant within two (2) weeks of filing of the application on whether the application is complete. If initial services and inspections are completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.
- 3.9 Number of licenses required.** When more than one type of facility or program is provided, the Department may consider the following criteria in determining the number of licenses required:
- 3.9.1** The physical location;
 - 3.9.2** The structure or management and ownership;
 - 3.9.3** If providing more than one licensed level of care, the physically distinct part of the building designated for the assisted living program; and
 - 3.9.4** The administrative and regulatory burdens and benefits of granting a given number of licenses.
- The Department will specify the number of apartments, as appropriate, for each level of care. The provider shall not exceed licensed capacity.
- 3.10 Adult day services programs.** When an adult day services program is physically located in an assisted living program, separate licenses shall not be required. The adult day services programs

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shall comply with the *Regulations Governing the Licensing and Functioning of Adult Day Services Programs* and licensed capacity will be reflected on the license.

- 3.11 Multilevel facility license.** For multilevel facilities, a single license will be issued by the Department, identifying each level of service. Multilevel facilities are assisted living programs that are located on the same contiguous grounds with licensed nursing facilities; adult day services programs or home health agencies. Multilevel facilities, when subject to licensing action or other sanctions, may have one or more of its levels sanctioned, and the Department will specify the particular levels in writing.
- 3.12 Provisional license.** The Department shall issue a provisional license, for a minimum period of three (3) months or longer as deemed necessary by the Department but not to exceed twelve (12) consecutive months, to an applicant who:
- 3.12.1** Has not previously operated the program for which the application is made or is licensed and has not operated the program during the term of that license;
 - 3.12.2** Complies with all applicable laws and regulations, except those which can only be complied with once consumers are served by the applicant; and
 - 3.12.3** Demonstrates the ability to comply with all applicable laws and regulations by the end of the Provisional license term; or
 - 3.12.4** Meets the criteria for default licensing.
- 3.13 Conditional license.** The Department may issue a conditional license when the licensee fails to comply with applicable laws and regulations and, in the judgment of the Commissioner of the Department of Health and Human Services, the best interest of the public would be so served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license. A conditional license may be issued for up to a twelve (12) month period.
- 3.14 Transfer of licenses.** No license may be transferred or applicable to any location or persons other than those specified on the license. When an assisted living program is sold or otherwise transferred to another provider, the new provider must apply for and obtain a license and pay a licensing fee prior to operating the program.
- 3.15 Term of license.** A license may be valid for two (2) years, as long as the Department has determined the assisted living program is in substantial compliance with licensing rules and has no history of health or safety violations. Prior to the expiration of the license, the Department shall inspect for continued compliance with applicable laws and regulations as often as deemed necessary by the Department. In facilities/programs licensed for more than one level of care, the term of the license will be the term permitted for the highest level of care. For purposes of this section, the following terms have the following meanings:
- 3.15.1** “Substantial compliance” means there were no Class I or II violations that would threaten the health or safety of consumers.

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- 3.15.2** “No history of health or safety violations” means that within the preceding two (2) years, the applicant was in substantial compliance with the rules.
- 3.16 Reapplications.** Whenever a licensee has made timely and sufficient application for renewal of a license, the existing license shall not expire until the application has been finally determined by the Department.
- 3.17 Posting the license.** The licensee shall post the license where it can be seen and reviewed by the public.
- 3.18 Right of entry.** The Department’s authorized representatives, authorized representatives of the Maine Attorney General’s Office and authorized representatives of the Long Term Care Ombudsman Program shall have the right to enter upon and into any licensed facility/program at any time, in order to determine the state of compliance with applicable laws and regulations contained herein. To inspect any facility, which the Department knows or believes, is operated without a license, the department may enter only with the permission of the owner or person in charge or with a search warrant from the District Court authorizing entry and inspection. Any application for an Assisted Living Program license shall constitute permission for entry and inspection to verify compliance with applicable law and rules.
- 3.19 Filing Plans of Correction.** Whenever the Department issues an SOD, the applicant/licensee shall submit a specific POC within ten (10) working days of the date the applicant/licensee received the SOD.
- 3.20 Reapplication subsequent to licensing actions.** Subsequent to any of the following actions, a full annual or biennial license will not be issued until the deficiencies identified by the Department have been corrected:
- 3.20.1** Issuance of a conditional license;
- 3.20.2** Refusal to issue or renew a license;
- 3.20.3** Revocation or suspension of a license; or
- 3.20.4** Refusal to issue a provisional license.
- 3.21 Renewal.** A renewal application must be received by the Department thirty (30) days prior to the license expiration date. Regardless of the term of the license, the licensee must pay a license fee annually. Prior to acting on the application for renewal the Department may:
- 3.21.1** Verify any information in the renewal application and conduct an inspection of the program;
- 3.21.2** Issue an SOD, as appropriate. If cited deficiencies are not corrected within the established time frame, the Department may deny the renewal application, impose a fine, issue a Directed POC, and/or impose a conditional license.
- 3.22 Actions requiring prior written approval.** When an alteration of the common dining room and public bathrooms are proposed, consumers may not use these areas until the Department has

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determined that the changes comply with these regulations and issues a written approval to proceed.

3.23 Waivers. The Department may waive or modify any provision(s) of these regulations as long as the provision is not mandated by state or federal law and does not violate consumer rights described in Section 5 of these regulations. The applicant/licensee shall indicate, in writing, what alternative method will comply with the intent of the regulation for which the waiver is sought. If approved, the waiver may be time limited.

3.24 Informal review of waiver denial. The applicant/licensee may appeal a decision of the Department to deny a waiver request by submitting a written request for an informal review by the Department, or its designee, within ten (10) working days of the date of receipt of the denial. The applicant/licensee shall state in the written request, the grounds for the appeal. Should the applicant/licensee disagree with the informal review decision, an administrative hearing (pursuant to the Maine Administrative Procedure Act) may be requested within ten (10) working days of the date of notice or receipt of the informal review decision by writing to the Department. See also Section 4.10 of these regulations.

3.25 Rates and contracts.

3.25.1 Rates. Assisted living programs shall list all standard charges and make them available to the public.

3.25.2 Signing a contract. Each provider and each consumer or someone authorized to act ~~in~~ on the consumer's behalf, shall sign a standard contract issued by the department, attached as Appendix A, at the time of any modification of an existing contract and with all new admissions, upon admission, or within sixty (60) calendar days of the effective date of these regulations. The consumer and/or consumer's legal representative shall be given an original of the signed contract and the provider shall keep a duplicate in the consumer's file. No one other than the consumer shall incur any responsibility for the consumer's obligations by signing the contract for admission of the consumer. Financial responsibility for the consumer's expenses can only be assumed according to Section 3.25.3.7.

3.25.3 Provisions of contract. The contract shall contain provisions regarding services and accommodations to be provided and the rates and charges for such and any other related charges not covered by the program's basic rate. The contract may contain additional provisions, as addenda, that do not conflict with these regulations. The provider may supplement but not replace the standard provisions, as long as they are consistent with the applicable assisted living program rules. Each contract is subject to the following requirements:

3.25.3.1 No contract may contain a provision for the discharge of a consumer which is inconsistent with state law or rule.

3.25.3.2 No contract may contain a provision that may require or imply a lesser standard of care or responsibility than is required by law or rule.

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- 3.25.3.3** Each contract shall provide for at least thirty (30) calendar days notice prior to any changes in rates, responsibilities, services to be provided or any other items included in the contract. The thirty (30) day notice will not be required if it is the resident, or the resident's legal representative, who requests additional services not included in the existing contract.
- 3.25.3.4** No contract or agreement will require a deposit or other prepayment, except one month's rent in an assisted living program which may be used as a security deposit. The contract must state the explicit return policy of the program with regard to the security deposit.
- 3.25.3.5** No contract may contain a provision which provides for the payment of attorney fees or any other cost of collecting payments from the consumer.
- 3.25.3.6** The following shall be appended to the contract and made a part thereof:
- 3.25.3.6.1** Grievance procedure;
 - 3.25.3.6.2** Tenancy obligations, if they exist;
 - 3.25.3.6.3** Consumer rights; and
 - 3.25.3.6.4** Copy of the admissions policy.
- 3.25.3.7** The contract signed for admission of the consumer may not require or encourage anyone other than the consumer to obligate himself/herself for the payment of the consumer's expenses. If anyone other than the consumer informs the assisted living program that he/she wishes to guarantee payment of the consumer's expenses, he/she can do so only in a **separate written agreement**. No provision in the separate written agreement can conflict with these rules. This **separate agreement** must be provided to the guarantor of payment and must plainly state the following:
- 3.25.3.7.1** Do not sign this agreement unless you voluntarily agree to be financially liable for paying the consumer's expenses with your own money.
 - 3.25.3.7.2** You may change your mind within forty-eight (48) hours of signing this agreement by notifying the assisted living program that you wish to revoke this agreement.
 - 3.25.3.7.3** You may call the Long Term Care Ombudsman Program for an explanation of your rights.

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- 3.26 Information to consumers.** The licensee must provide an information packet that includes the following information to the consumer and/or consumer's legal representative at the time of admission or within sixty (60) calendar days of the effective date of these regulations for all current consumers who have not already been given this information:
- 3.26.1** Advance Directives information;
 - 3.26.2** Information regarding the type of assisted living program and the licensing status;
 - 3.26.3** The Maine Long Term Care Ombudsman Program brochure;
 - 3.26.4** Toll free telephone numbers for the Office of Advocacy of the Department of Health and Human Services (formerly known as the Department of Behavioral and Developmental Services (BDS)) if the program has consumers who receive services from that Department, Adult Protective Services, Assisted Living Licensing Services and Division of Licensing and Certification; and
 - 3.26.5** The process and criteria for placement in, or transfer or discharge from, the assisted living program; and
 - 3.26.6** The assisted living program's staff qualifications.
- 3.27 Information for residents of Alzheimer's/dementia units.** When a provider operates a unit meeting the requirements of a Designated Alzheimer's/Dementia Care Unit as all or part of its program, consumers and family members, or any other authorized representative must be provided the following information:
- 3.27.1** A written statement of philosophy;
 - 3.27.2** The process used for consumer assessment and establishment of a consumer services plan and its implementation;
 - 3.27.3** Those physical environment and design features that support the functioning of adults with cognitive impairments;
 - 3.27.4** The frequency and types of group and individual activities provided by the program;
 - 3.27.5** A description of family involvement and the availability of family support programs;
 - 3.27.6** A description of security measures provided;
 - 3.27.7** A description of in-service training provided for staff; and
 - 3.27.8** Policies with criteria and procedures for admission and discharge of consumers to and from the program/unit.
- 3.28 Refunds.** Refunds are to be managed as follows:

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- 3.28.1** If a consumer dies or is discharged, the provider shall issue a refund to the consumer, the consumer's legal representative or the consumer's estate for any advance payments on a pro-rated basis. The refund will be calculated from the time the unit is surrendered to the licensee or 15 days from the date of written notice (in a non-emergency situation), whichever is later.
- 3.28.2** Refunds shall be made within thirty (30) calendar days of date of discharge/death.
- 3.28.3** If a consumer is determined to be retroactively eligible for third party payment, upon payment from a third party payer, the provider must repay the family or other payer any payments made for the period covered by third party payment.
- 3.29 Use of personal funds by operator.** Under no circumstances shall any operator or agent of an assisted living program use the personal funds of any consumer for the operating costs of the assisted living program or for items that are part of the contractual payment. The personal funds of any consumer shall not be commingled with the business funds of the assisted living program or with the personal funds or accounts of the owner, any member of the owner's family or any employee of the assisted living program. No operator or agent of the assisted living program shall borrow money from any consumer. *(Class IV)*
- 3.30 Tenancy obligation.** Tenancy obligations, if they exist in the assisted living program, must not conflict with these regulations and are subject to Section 5.26 of these regulations.
- 3.31 Administrative and consumer records.**
- 3.31.1 Confidentiality.** All administrative and consumer records shall be stored in such a manner that unauthorized persons cannot gain access to them.
- 3.31.2 Location of records.** All consumer records, consumer finances, admission/discharge records and census logs shall be readily accessible to the Department even in the event of a change of ownership or administration, unless this is done pursuant to a court order or to Section 5.12 of these regulations. Other administrative records, including personnel records, shall be made available with reasonable notice by the Department. All records shall be maintained in a format that is readily accessible and available to all appropriate staff.
- 3.31.3 Inspection of records.** All reports and records shall be made available for inspection upon request by the Department, the Long Term Care Ombudsman Program or the Maine Attorney General's Office without the consent of the consumer or his/her legal representative.
- 3.31.4 Record retention.** All administrative and consumer records shall be maintained in an accessible format for at least seven (7) years after the date of death or last discharge of the consumer.
- 3.31.5 Storage of records.** Provisions shall be made for the safe storage of all records required by these regulations.

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3.31.6 Disaster plan. Each assisted living program shall develop a comprehensive disaster plan. This plan shall include the following:

3.31.6.1 Contingencies for loss of power, heat, lights, water and/or sewage disposal;

3.31.6.2 Contingencies for short term and long term emergencies; and

3.31.6.3 If an assisted living program has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.